IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
WRIT PETITION NO.269 OF 2007

Rameshchandra Y. Ambekar. .. .. Petitioner
v/s.
The Union of India & ors. .. .. Respondents

Mr.Madhav Jamdar for petitioner.
Mr.J.C.Satpute with Ms.Leena Patil for respondent No.1.
Mr.M.D. Siodia i/by M/s.Rustomji & Ginwala & Co. for respondent Nos.2 to 6.

CORAM : H.L. GOKHALE, ACTING C.J. &
V.M. KANADE, J.

DATED : 15th January 2007

P.C. :

1. Heard the learned Counsel for the parties.

2. The petitioner herein was appointed as a dealer for distribution of Liquefied Petroleum Gas ("LPG") cylinders by the 2nd respondent-Hindustan Petroleum Corporation. He was functioning in Navi Mumbai area from sometimes in 1993, but later on serious discrepancies were detected in his functioning. It is the case of the 2nd respondent-Corporation that several notices were sent to the petitioner for his irregularities and mal practices, some of which were replied by the petitioner. Finally when a Show Cause Notice dated 6th April 2006 was given to the petitioner, he had not given any reply to it within the time

stipulated. Amongst others it was stated that there was variation in the domestic cylinders delivered and at times the deliverymen employed by the petitioner were caught red handed by the Police personnel while indulging in the pilferage of LPG. Ultimately his dealership came to be terminated by an order dated 26th May 2006.

3. Mr.Jamdar, learned Counsel appearing for the petitioner, points out that one reply is sent on 15th May 2006 to the Show Cause Notice dated 6th April 2006 which is prior to the decision of the 2nd respondent-Corporation. Mr.Siodia however points out that it is stated in the order that the said reply has been looked into carefully and it is found to be devoid of any merit.

4. In any case, the petitioner’s dealership having been terminated, he has filed this Petition to challenge that decision.

5. Mr.Siodia, learned Counsel appearing for respondent Nos.2 to 6, points out that in the Dealership Agreement itself there is a provision for arbitration. Clause 38 thereof specifically provides that if any dispute or difference arises regarding the rights, liability, acts, omission or

account of any of the parties arising out of or in relation to the agreement, the same shall be referred to the sole arbitration of the Managing Director of the Corporation. The petitioner having accepted the dealership under this Agreement, the submission of Mr.Siodia is that an appropriate forum is provided and that ought to be exhausted. In this behalf, he relies upon para-14 of a judgment of the Apex Court in the case of **Hindustan Petroleum Corporation Ltd. vs. M/s.Pinkcity Midway Petroleums reported in AIR 2003 SC 2881**.

6. Mr.Jamdar, on the other hand, draws our attention to a judgment of the Apex Court in the case of **Harbanslal Sahnia & anr. vs. Indian Oil Corporation Ltd. & ors. reported in (2003) 2 SCC 107**. In para-7 thereof, the Apex Court has held that where there is a violation of fundamental rights or violation of principles of natural justice or where the action is wholly without jurisdiction, the alternative remedy may not be considered as an answer to the writ petition.

7. In the facts and circumstances of the present case, in our view, the petitioner has not been able to make out any such case. All his

submissions will require going to the factual determination. It is better that a proper forum which is provided, should look into the matter. The Petition is, therefore, dismissed.

8. Mr.Jamdar prays that the dealership which is awarded to the petitioner, may not be given to somebody else. He may make an appropriate application before the Arbitrator, if so advised. We, however, record that the work of those consumers, which was allotted to the petitioner, has already been distributed to some other dealers and rightly so.

9. The Arbitrator shall decide the submissions made by the parties on merits. We have not made any observation on the merits of the controversy as such.

10. Mr.Jamdar requests for continuation of the status quo. No such order can be passed. Request is rejected.

(ACTING C.J.)

(V.M. KANADE, J.)